

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

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**Commissioner for Patents  
Alexandria, VA 22313**

**SUPPLEMENTAL RESPONSE TO OFFICE ACTION MAILED ON APRIL 30,**

**2009 AND CLAIM AMENDMENTS**

Sir:

Applicants filed a response on June 30, 2009 to Examiner's rejection of claims 2, 12, 14, 31 - 32, and 34 - 46. It is Applicants' understanding that Applicants' amendment that was filed on June 30, 2009 has not been entered, and the following response and claim listing is submitted in place of the response that was filed on June 30, 2009.

**I. CLAIM REJECTIONS – 35 USC § 102**

In response to Examiner's rejection of claims 31, 32, 34 - 42, 44 and 45, which were rejected under 35 U.S.C. § 102(b), Applicants amend claim 31 to include the following: "causing said optical radiation to be commonly therapeutically effective in humans by employing a pre-established spectral composition that has been pre-identified as a maximally potent spectral composition in the regulation of human circadian physiology, said pre-established spectral composition comprising at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm". Applicants note that the present invention teaches causing optical radiation to be

commonly therapeutically effective in humans by employing a pre-established spectral composition that has been pre-identified as a maximally potent spectral composition in the regulation of human circadian physiology. In contrast, Searfoss et al. (5,265,598), among other differences teaches employing a spectral composition that is individually determined based on subjective response of the specific human being treated.

Claim 31 is "currently amended" in a manner that is identical to the amendment of claim 31, that was "currently amended" in the response filed on June 30, 2009.

Applicants further note that claims 32, and 34 - 42, and 44 - 45 now depend from allowable claims.

Claims 35 - 38 now depend from allowable claims. It is noted that Searfoss et al. (5,265,598) does not teach a blue light filter or the 435 – 488 nm waveband. The only color Searfoss et al. (5,265,598) specifically identifies is “green” which is mentioned three times in the claims, once in the Summary and once in the Description. Searfoss et al. (5,265,598) identify no other colors in their application. Sakamoto el al. (5,648,653) does not teach a method of at least treating or preventing at least one light responsive disorder in at least one mammal.

Applicants cancel the following claims without prejudice for reasons of efficiency and not for reasons of patentability; which Applicants may intend to resubmit in a continuation application to be filed while the current application is pending: 2, 12, 14, 43, and 46.

In addition, to put the application in better form for allowance, applicants currently cancel the following previously withdrawn claims without prejudice for reasons of efficiency and not for reasons of patentability; which Applicants may intend to

resubmit in a continuation application to be filed while the current application is pending: 28 - 30, 33, and 47 - 56.

Claim 57 was added as a "new" claim in the amendment filed on June 30, 2009, however, the amendments filed on June 30, 2009 have not been entered and claim 57 is now listed as "not entered". Claim 57 is currently not submitted as a "new" claim for reasons of efficiency and not for reasons of patentability; and Applicants may intend to resubmit claim 57 as a new claim in a continuation application to be filed while the current application is pending.

## **II. AMENDMENTS TO THE CLAIMS**

This listing of claims will replace all prior versions, and listings, of claims in the application. Amend the claims as follows: